

\*\*\*\*Current as of 5/14/13\*\*\*\*\*

**51-7-1. Short title of chapter.**

This chapter shall be known and may be cited as the "State Money Management Act."

**51-7-2. Exemptions from chapter.**

The following funds are exempt from this chapter:

- (1) funds invested in accordance with the participating employees' designation or direction pursuant to a public employees' deferred compensation plan established and operated in compliance with Section 457 of the Internal Revenue Code of 1986, as amended;
- (2) funds of the Workers' Compensation Fund;
- (3) funds of the Utah State Retirement Board;
- (4) funds of the Utah Housing Corporation;
- (5) endowment funds of higher education institutions;
- (6) permanent and other land grant trust funds established pursuant to the Utah Enabling Act and the Utah Constitution;
- (7) the State Post-Retirement Benefits Trust Fund;
- (8) the funds of the Utah Educational Savings Plan; and
- (9) funds of the permanent state trust fund created by and operated under Utah Constitution, Article XXII, Section 4.

**51-7-3. Definitions.**

As used in this chapter:

- (1) "Agent" means "agent" as defined in Section 61-1-13.
- (2) "Certified dealer" means:
  - (a) a primary reporting dealer recognized by the Federal Reserve Bank of New York who is certified by the director as having met the applicable criteria of council rule; or
  - (b) a broker dealer who:
    - (i) has and maintains an office and a resident registered principal in the state;
    - (ii) meets the capital requirements established by council rules;
    - (iii) meets the requirements for good standing established by council rule; and
    - (iv) is certified by the director as meeting quality criteria established by council rule.
- (3) "Certified investment adviser" means a federal covered adviser, as defined in Section 61-1-13, or an investment adviser, as defined in Section 61-1-13, who is certified by the director as having met the applicable criteria of council rule.
- (4) "Commissioner" means the commissioner of financial institutions.
- (5) "Council" means the State Money Management Council created by Section 51-7-16.
- (6) "Covered bond" means a publicly placed debt security issued by a bank, other regulated financial institution, or a subsidiary of either that is secured by a pool of loans that remain on the balance sheet of the issuer or its subsidiary.
- (7) "Director" means the director of the Utah State Division of Securities of the Department of Commerce.
- (8) (a) "Endowment funds" means gifts, devises, or bequests of property of any kind donated to a higher education institution from any source.
  - (b) "Endowment funds" does not mean money used for the general operation of a higher education institution that is received by the higher education institution from:
    - (i) state appropriations;

- (ii) federal contracts;
- (iii) federal grants;
- (iv) private research grants; and
- (v) tuition and fees collected from students.

(9) "First tier commercial paper" means commercial paper rated by at least two nationally recognized statistical rating organizations in the highest short-term rating category.

(10) "Funds functioning as endowments" means funds, regardless of source, whose corpus is intended to be held in perpetuity by formal institutional designation according to the institution's policy for designating those funds.

(11) "GASB" or "Governmental Accounting Standards Board" means the Governmental Accounting Standards Board that is responsible for accounting standards used by public entities.

(12) "Hard put" means an unconditional sell-back provision or a redemption provision applicable at issue to a note or bond, allowing holders to sell their holdings back to the issuer or to an equal or higher-rated third party provider at specific intervals and specific prices determined at the time of issuance.

(13) "Higher education institution" means the institutions specified in Section 53B-1-102.

(14) "Investment adviser representative" is as defined in Section 61-1-13.

(15) (a) "Investment agreement" means any written agreement that has specifically negotiated withdrawal or reinvestment provisions and a specifically negotiated interest rate.

(b) "Investment agreement" includes any agreement to supply investments on one or more future dates.

(16) "Local government" means a county, municipality, school district, local district under Title 17B, Limited Purpose Local Government Entities - Local Districts, special service district under Title 17D, Chapter 1, Special Service District Act, or any other political subdivision of the state.

(17) "Market value" means market value as defined in the Master Repurchase Agreement.

(18) "Master Repurchase Agreement" means the current standard Master Repurchase Agreement approved by the Public Securities Association or by any successor organization.

(19) "Maximum amount" means, with respect to qualified depositories, the total amount of:

- (a) deposits in excess of the federal deposit insurance limit; and
- (b) nonqualifying repurchase agreements.

(20) "Money market mutual fund" means an open-end managed investment fund:

(a) that complies with the diversification, quality, and maturity requirements of Rule 2a-7 or any successor rule of the Securities and Exchange Commission applicable to money market mutual funds; and

(b) that assesses no sales load on the purchase of shares and no contingent deferred sales charge or other similar charges, however designated.

(21) "Nationally recognized statistical rating organization" means an organization that has been designated as a nationally recognized statistical rating organization by the Securities and Exchange Commission's Division of Market Regulation.

(22) "Nonqualifying repurchase agreement" means a repurchase agreement evidencing indebtedness of a qualified depository arising from the transfer of obligations of the United

States Treasury or other authorized investments to public treasurers that is:

- (a) evidenced by a safekeeping receipt issued by the qualified depository;
- (b) included in the depository's maximum amount of public funds; and
- (c) valued and maintained at market value plus an appropriate margin collateral

requirement based upon the term of the agreement and the type of securities acquired.

(23) "Operating funds" means current balances and other funds that are to be disbursed for operation of the state government or any of its boards, commissions, institutions, departments, divisions, agencies, or other similar instrumentalities, or any county, city, school district, political subdivision, or other public body.

(24) "Permanent funds" means funds whose principal may not be expended, the earnings from which are to be used for purposes designated by law.

(25) "Permitted depository" means any out-of-state financial institution that meets quality criteria established by rule of the council.

(26) "Public funds" means money, funds, and accounts, regardless of the source from which the money, funds, and accounts are derived, that are owned, held, or administered by the state or any of its boards, commissions, institutions, departments, divisions, agencies, bureaus, laboratories, or other similar instrumentalities, or any county, city, school district, political subdivision, or other public body.

(27) (a) "Public money" means "public funds."

(b) "Public money," as used in Article VII, Sec. 15, Utah Constitution, means the same as "state funds."

(28) "Public treasurer" includes the state treasurer and the official of any state board, commission, institution, department, division, agency, or other similar instrumentality, or of any county, city, school district, political subdivision, or other public body who has the responsibility for the safekeeping and investment of any public funds.

(29) "Qualified depository" means a Utah depository institution or an out-of-state depository institution, as those terms are defined in Section 7-1-103, that is authorized to conduct business in this state under Section 7-1-702 or Title 7, Chapter 19, Acquisition of Failing Depository Institutions or Holding Companies, whose deposits are insured by an agency of the federal government and that has been certified by the commissioner of financial institutions as having met the requirements established under this chapter and the rules of the council to be eligible to receive deposits of public funds.

(30) "Qualifying repurchase agreement" means a repurchase agreement evidencing indebtedness of a financial institution or government securities dealer acting as principal arising from the transfer of obligations of the United States Treasury or other authorized investments to public treasurers only if purchased securities are:

(a) delivered to the public treasurer's safekeeping agent or custodian as contemplated by Section 7 of the Master Repurchase Agreement; and

(b) valued and maintained at market value plus an appropriate margin collateral requirement based upon the term of the agreement and the type of securities acquired.

(31) "Reciprocal deposits" means deposits that are initially deposited into a qualified depository and are then redeposited through a deposit account registry service:

(a) in one or more FDIC-insured depository institutions in amounts up to the relevant FDIC-insured deposit limit for a depositor in each depository institution; and

(b) in exchange for reciprocal FDIC-insured deposits made through the deposit account registry service to the qualified depository.

(32) "Securities division" means Utah's Division of Securities created within the Department of Commerce by Section 13-1-2.

(33) "State funds" means:

(a) public money raised by operation of law for the support and operation of the state government; and

(b) all other money, funds, and accounts, regardless of the source from which the money, funds, or accounts are derived, that are owned, held, or administered by the state or any of its boards, commissions, institutions, departments, divisions, agencies, bureaus, laboratories, or other similar instrumentalities.

**51-7-3.5. State fiscal year.**

The fiscal year of the state of Utah shall commence on the first day of July of each year.

**51-7-4. Transfer of functions, powers, and duties relating to public funds to state treasurer -- Exceptions -- Deposit of income from investment of state money.**

(1) Unless otherwise required by the Utah Constitution or applicable federal law, the functions, powers, and duties vested by law in each state officer, board, commission, institution, department, division, agency, or other similar instrumentality relating to the deposit, investment, or reinvestment of public funds, and the purchase, sale, or exchange of investments or securities of, or for, funds or accounts under the control and management of each of these instrumentalities, are transferred to and shall be exercised by the state treasurer, except:

(a) funds assigned to the Utah State Retirement Board for investment under Section 49-11-302;

(b) funds of member institutions of the state system of higher education:

(i) acquired by gift, devise, or bequest, or by federal or private contract or grant;

(ii) derived from student fees or from income from operations of auxiliary enterprises, which fees and income are pledged or otherwise dedicated to the payment of interest and principal of bonds issued by an institution of higher education;

(iii) subject to rules made by the council, under Section 51-7-18, deposited in a foreign depository institution as defined in Section 7-1-103; and

(iv) other funds that are not included in the institution's work program as approved by the State Board of Regents;

(c) inmate funds as provided in Section 64-13-23 or in Title 64, Chapter 9b, Work Programs for Prisoners;

(d) trust funds established by judicial order;

(e) funds of the Workers' Compensation Fund;

(f) funds of the Utah Housing Corporation;

(g) endowment funds of higher education institutions; and

(h) the funds of the Utah Educational Savings Plan.

(2) All public funds held or administered by the state or its boards, commissions, institutions, departments, divisions, agencies, or similar instrumentalities and not transferred to the state treasurer as provided by this section shall be:

(a) deposited and invested by the custodian in accordance with this chapter, unless otherwise required by statute or by applicable federal law; and

(b) reported to the state treasurer in a form prescribed by the state treasurer.

(3) Unless otherwise provided by the constitution or laws of this state or by contractual

obligation, the income derived from the investment of state money by the state treasurer shall be deposited in and become part of the General Fund.

**51-7-5. Transfer of public funds not otherwise required to be transferred to state treasurer -- Duties of public treasurers -- Withdrawals of transferred funds.**

Any public funds as to which the deposit, investment, or reinvestment is not transferred to the state treasurer by Section 51-7-4, may be transferred to the state treasurer by the public treasurer having responsibility for the control or management of these public funds. Notwithstanding the transfer, the public treasurer shall retain sufficient funds to cover the cash requirements of the body owning or having control or management of these funds and shall continue to be responsible for the proper collection, deposit, and disbursement of these funds in the manner provided by law. The public funds transferred or placed under the control or supervision of the state treasurer under this section are subject to all applicable provisions of this chapter and are under the jurisdiction of the state treasurer until the public treasurer withdraws these public funds from the state treasurer. Withdrawals may be made from time to time on such reasonable notice as the state treasurer may prescribe. The public treasurer may withdraw all or any part of the public funds originally transferred to the state treasurer, subject to any rules as to the maximum amounts which may be withdrawn at any one time as the state treasurer may reasonably prescribe.

**51-7-6. Calculation of shares of participating funds -- Allocations of income to participating funds.**

(1) The share of public funds of each participating public treasurer who has transferred public funds to the state treasurer for investment under Section 51-7-5, including trust funds invested by the state treasurer under this chapter, shall be calculated not less than quarterly.

(2) Income from investment of these public funds by the state treasurer, including gains or losses from the sale or exchange of investments or other properties, and net of investment fees and other charges assessed according to the schedule established by the state treasurer, shall be allocated to each participating fund on the ratio of each fund's share to the total public funds in the custody of the state treasurer determined on the basis of the average daily balance of each fund.

**51-7-7. Securities and evidence of deposits and investments -- Custody -- Deposit for safekeeping.**

(1) (a) (i) The public treasurer shall have custody of all securities purchased or held and all evidence of deposits and investments of public funds.

(ii) All securities shall be delivered versus payment to the public treasurer or to the treasurer's safekeeping bank.

(b) The public treasurer may deposit any of these securities with a bank or trust company to be held in safekeeping by that custodian.

(c) The provisions of this section do not apply to securities acquired under a nonqualifying repurchase agreement as defined in Section 51-7-3.

(d) The provisions of this section apply to any book-entry-only deposit or security the ownership records of which are maintained with a securities depository, in the Federal Book Entry system authorized by the U.S. Department of Treasury, or in the book-entry records of the issuer, as follows:

(i) the direct ownership of the deposit or security by the public treasurer shall be reflected in the book-entry records and represented by a receipt, confirmation, or statement issued to the public treasurer by the custodian of the book-entry system; or

(ii) the ownership of the deposit or security by the public treasurer's custodial bank or trust company shall be reflected in the book-entry records and the public treasurer's ownership shall be represented by a receipt, confirmation, or statement issued by the custodial bank or trust company.

(2) The public treasurer may maintain accounts with money center banks only for the purposes of settling investment transactions, safekeeping, and collecting those investments.

**51-7-8. Separate accounts for funds -- Credit of allocated shares of income and gains or losses.**

The state treasurer shall keep for each fund for which investments are made, a separate account, to be designated by name and number, which shall record the individual amounts and the totals of all investments belonging to the fund, and shall credit to each fund not less often than quarterly its allocated share of the income from the investments of pooled funds, and gains or losses from the sale or exchange of pooled investment assets.

**51-7-9. Quarterly reports by state treasurer -- Audit of accounts of state treasurer -- Report of audit -- Employment of investment staff and services.**

The state treasurer shall report not less often than quarterly to each participating state officer, board, commission, institution, department, division, agency, or other similar instrumentality, or political subdivision, the activities, investments, and performance of his office during the preceding period. The accounts of the state treasurer shall be audited annually under the direction of the state auditor. The report of this audit shall be open for inspection by the public in the offices of the state auditor and the state treasurer and a copy of it shall be submitted to the legislature through the Office of the Legislative Fiscal Analyst. The state treasurer is authorized, within the limits of available appropriations, to employ such investment staff and secure such financial, investment, and other technical services he considers necessary to properly carry out his responsibilities under this chapter.

**51-7-9.5. State School Fund report.**

(1) The state treasurer shall prepare a report at the end of each fiscal year on the State School Fund created in Utah Constitution Article X, Section 5.

(2) The report shall include the following information:

(a) the name of each asset within the fund and the fair market value of each asset as of June 30;

(b) the amount and date of each contribution to the fund during the fiscal year;

(c) a balance sheet for the most recently completed fiscal year and the previous fiscal year;

(d) the fund's internal rate of return for the previous year, three years, and five years;

(e) a summary of the asset allocation policy for the fund;

(f) a description of the fund income, including amounts distributed and amounts retained; and

(g) expenses in dollars and as a percent of fund assets.

(3) The state treasurer shall submit the report to the Education Interim Committee by

October 1 of each year.

**51-7-11. Authorized deposits or investments of public funds.**

(1) (a) Except as provided in Subsections (1)(b) and (1)(c), a public treasurer shall conduct investment transactions through qualified depositories, certified dealers, or directly with issuers of the investment securities.

(b) A public treasurer may designate a certified investment adviser to make trades on behalf of the public treasurer.

(c) A public treasurer may make a deposit in accordance with Section 53B-7-601 in a foreign depository institution as defined in Section 7-1-103.

(2) The remaining term to maturity of the investment may not exceed the period of availability of the funds to be invested.

(3) Except as provided in Subsection (4), all public funds shall be deposited or invested in the following assets that meet the criteria of Section 51-7-17:

- (a) negotiable or nonnegotiable deposits of qualified depositories;
- (b) qualifying or nonqualifying repurchase agreements and reverse repurchase agreements with qualified depositories using collateral consisting of:
  - (i) Government National Mortgage Association mortgage pools;
  - (ii) Federal Home Loan Mortgage Corporation mortgage pools;
  - (iii) Federal National Mortgage Corporation mortgage pools;
  - (iv) Small Business Administration loan pools;
  - (v) Federal Agriculture Mortgage Corporation pools; or
  - (vi) other investments authorized by this section;
- (c) qualifying repurchase agreements and reverse repurchase agreements with certified dealers, permitted depositories, or qualified depositories using collateral consisting of:
  - (i) Government National Mortgage Association mortgage pools;
  - (ii) Federal Home Loan Mortgage Corporation mortgage pools;
  - (iii) Federal National Mortgage Corporation mortgage pools;
  - (iv) Small Business Administration loan pools; or
  - (v) other investments authorized by this section;
- (d) commercial paper that is classified as "first tier" by two nationally recognized statistical rating organizations, which has a remaining term to maturity of:
  - (i) 270 days or fewer for paper issued under 15 U.S.C. Sec. 77c(a)(3); or
  - (ii) 365 days or fewer for paper issued under 15 U.S.C. Sec. 77d(2);
- (e) bankers' acceptances that:
  - (i) are eligible for discount at a Federal Reserve bank; and
  - (ii) have a remaining term to maturity of 270 days or fewer;
- (f) fixed rate negotiable deposits issued by a permitted depository that have a remaining term to maturity of 365 days or fewer;
- (g) obligations of the United States Treasury, including United States Treasury bills, United States Treasury notes, and United States Treasury bonds;
- (h) obligations other than mortgage pools and other mortgage derivative products issued by, or fully guaranteed as to principal and interest by, the following agencies or instrumentalities of the United States in which a market is made by a primary reporting government securities dealer, unless the agency or instrumentality has become private and is no longer considered to be a government entity:

- (i) Federal Farm Credit banks;
- (ii) Federal Home Loan banks;
- (iii) Federal National Mortgage Association;
- (iv) Federal Home Loan Mortgage Corporation;
- (v) Federal Agriculture Mortgage Corporation; and
- (vi) Tennessee Valley Authority;
- (i) fixed rate corporate obligations that:
  - (i) are rated "A" or higher or the equivalent of "A" or higher by two nationally recognized statistical rating organizations;
  - (ii) are senior unsecured or secured obligations of the issuer, excluding covered bonds;
  - (iii) are publicly traded; and
  - (iv) have a remaining term to final maturity of 15 months or less or are subject to a hard put at par value or better, within 365 days;
- (j) tax anticipation notes and general obligation bonds of the state or a county, incorporated city or town, school district, or other political subdivision of the state, including bonds offered on a when-issued basis without regard to the limitations in Subsection (7);
- (k) bonds, notes, or other evidence of indebtedness of a county, incorporated city or town, school district, or other political subdivision of the state that are payable from assessments or from revenues or earnings specifically pledged for payment of the principal and interest on these obligations, including bonds offered on a when-issued basis without regard to the limitations in Subsection (7);
- (l) shares or certificates in a money market mutual fund;
- (m) variable rate negotiable deposits that:
  - (i) are issued by a qualified depository or a permitted depository;
  - (ii) are repriced at least semiannually; and
  - (iii) have a remaining term to final maturity not to exceed three years;
- (n) variable rate securities that:
  - (i) (A) are rated "A" or higher or the equivalent of "A" or higher by two nationally recognized statistical rating organizations;
  - (B) are senior unsecured or secured obligations of the issuer, excluding covered bonds;
  - (C) are publicly traded;
  - (D) are repriced at least semiannually; and
  - (E) have a remaining term to final maturity not to exceed three years or are subject to a hard put at par value or better, within 365 days;
  - (ii) are not mortgages, mortgage-backed securities, mortgage derivative products, or a security making unscheduled periodic principal payments other than optional redemptions; and
  - (o) reciprocal deposits made in accordance with Subsection 51-7-17(4).
- (4) The following public funds are exempt from the requirements of Subsection (3):
  - (a) the Employers' Reinsurance Fund created in Section 34A-2-702;
  - (b) the Uninsured Employers' Fund created in Section 34A-2-704;
  - (c) a local government other post-employment benefits trust fund under Section 51-7-12.2; and
  - (d) a nonnegotiable deposit made in accordance with Section 53B-7-601 in a foreign depository institution as defined in Section 7-1-103.
- (5) If any of the deposits authorized by Subsection (3)(a) are negotiable or nonnegotiable large time deposits issued in amounts of \$100,000 or more, the interest shall be



calculated on the basis of the actual number of days divided by 360 days.

(6) A public treasurer may maintain fully insured deposits in demand accounts in a federally insured nonqualified depository only if a qualified depository is not reasonably convenient to the entity's geographic location.

(7) Except as provided under Subsections (3)(j) and (k), the public treasurer shall ensure that all purchases and sales of securities are settled within:

- (a) 15 days of the trade date for outstanding issues; and
- (b) 30 days for new issues.

**51-7-11.5. Certified investment advisers -- Scope of and limits to authority.**

(1) Certified investment advisers may not make any investments that are inconsistent with this chapter or rules of the council.

(2) Certified investment advisers acting on behalf of a public treasurer shall conduct investment transactions only through qualified depositories, certified dealers, or directly with issuers of the investment securities.

**51-7-12.2. Definitions -- Local government other post-employment benefits trust fund -- Investments -- State treasurer duties.**

(1) As used in this section:

(a) "Local Government OPEB Trust Fund" or "Local Government Other Post-Employment Benefits Trust Fund" means money set aside by a local government to fund future payments of benefits, other than pensions, to a former employee who is qualified for the benefits.

(b) "Local Government OPEB Trust Fund" does not include money for deposit in the Utah State Retirement Investment Fund created under Section 49-11-301, or money for deposit in the Post-Retirement Benefits Trust Fund created under Section 67-19d-201.

(2) All local government OPEB trust fund money in the custody of a local government treasurer shall be established in a separate trust fund in accordance with standards established by the Governmental Accounting Standards Board.

(3) Money in a local government OPEB trust fund may be deposited or invested only in the following assets that meet the criteria of Section 51-7-17:

- (a) a deposit or investment authorized under Section 51-7-11;
- (b) indexed funds of an open-end diversified management investment company established under the Investment Companies Act of 1940; or
- (c) indexed funds that are administered by the state treasurer in accordance with Subsection (4).

(4) The state treasurer may:

- (a) develop and offer a variety of asset allocation options for money in a local government OPEB trust fund;
- (b) review for efficiency, the asset allocation options offered under Subsection (4)(a) as needed; and
- (c) charge an administrative fee of not more than .005 percent per month of the assets managed for cost incurred in the management of funds within an asset allocation option.

**51-7-12.5. Deposit or investment of the Employers' Reinsurance Fund and Uninsured Employers' Fund -- Authorized deposits and investments -- Asset manager.**

(1) The principal of the Employers' Reinsurance Fund created in Section 34A-2-702, and the Uninsured Employers' Fund created in Section 34A-2-704 shall be deposited or invested only in the following:

- (a) any deposit or investment authorized by Section 51-7-11;
  - (b) equity securities, including common and preferred stock issued by corporations listed on a major securities exchange, in accordance with the following criteria applied at the time of investment:
    - (i) the treasurer may not invest more than 5%, determined on a cost basis, of the total fund assets in the securities of any one issuer;
    - (ii) the treasurer may not invest more than 25%, determined on a cost basis, of total fund assets in a particular industry;
    - (iii) the treasurer may not invest more than 5%, determined on a cost basis, of the total fund assets in securities of corporations that have been in continuous operation for less than three years;
    - (iv) the fund may not hold in excess of 5% of the outstanding voting securities of any one corporation; and
    - (v) at least 75% of the corporations in which investments are made under Subsection (1)(b) must appear on the Standard and Poor's 500 Composite Stock Price Index;
  - (c) fixed-income securities, including bonds, notes, mortgage securities, zero coupon securities and convertible securities issued by domestic corporations rated "A" or higher or the equivalent of "A" or higher by two nationally recognized statistical rating organizations in accordance with the following criteria applied at the time of investment:
    - (i) the treasurer may not invest more than 5%, determined on a cost basis, of the total fund assets in the securities of any one issuer;
    - (ii) the treasurer may not invest more than 25%, determined on a cost basis, of the total fund assets in a particular industry;
    - (iii) the treasurer may not invest more than 5%, determined on a cost basis, of the total fund assets in securities of corporations that have been in continuous operation for less than three years; and
    - (iv) the dollar-weighted average maturity of fixed-income securities acquired under Subsection (1)(c) may not exceed 10 years;
  - (d) fixed-income securities issued by agencies of the United States and government-sponsored organizations, including mortgage-backed pass-through certificates and mortgage-backed bonds;
  - (e) shares of an open-end diversified management investment company established under the Investment Companies Act of 1940; or
  - (f) shares of or deposits in a pooled-investment program.
- (2) (a) No more than 65% of the total fund assets of any of these funds, on a cost basis, may be invested in common or preferred stocks at any one time.
- (b) At least 35% of the total assets of these funds shall be invested in fixed-income securities authorized by Section 51-7-11 and Subsections (1)(c) and (d).
- (3) The state treasurer shall use appropriate investment strategies to protect the principal of the funds administered under this section during periods of financial market volatility.
- (4) (a) The state treasurer may employ professional asset managers to assist in the investment of assets of the funds.

(b) The treasurer may provide compensation to asset managers from earnings generated by the funds' investments.

**51-7-13. Funds of member institutions of state system of higher education and public education foundations -- Authorized deposits or investments.**

- (1) The provisions of this section apply to all funds of:
  - (a) higher education institutions, other than endowment funds, that are not transferred to the state treasurer under Section 51-7-4; and
  - (b) public education foundations established under Section 53A-4-205.
- (2) (a) Proceeds of general obligation bond issues and all funds pledged or otherwise dedicated to the payment of interest and principal of general obligation bonds issued by or for the benefit of the institution shall be invested according to the requirements of:
  - (i) Section 51-7-11 and the rules of the council; or
  - (ii) the terms of the borrowing instruments applicable to those bonds and funds if those terms are more restrictive than Section 51-7-11.
- (b) (i) The public treasurer shall invest the proceeds of bonds other than general obligation bonds issued by or for the benefit of the institution and all funds pledged or otherwise dedicated to the payment of interest and principal of bonds other than general obligation bonds according to the terms of the borrowing instruments applicable to those bonds.
- (ii) If no provisions governing investment of bond proceeds or pledged or dedicated funds are contained in the borrowing instruments applicable to those bonds or funds, the public treasurer shall comply with the requirements of Section 51-7-11 in investing those proceeds and funds.
- (c) All other funds in the custody or control of any of those institutions or public education foundations shall be invested as provided in Section 51-7-11 and the rules of the council.
- (3) (a) Each institution shall make monthly reports detailing the deposit and investment of funds in its custody or control to its institutional council and the State Board of Regents.
- (b) The state auditor may conduct or cause to be conducted an annual audit of the investment program of each institution.
- (c) The State Board of Regents shall:
  - (i) require whatever internal controls and supervision are necessary to ensure the appropriate safekeeping, investment, and accounting for all funds of these institutions; and
  - (ii) submit annually to the governor and the Legislature a summary report of all investments by institutions under its jurisdiction.

**51-7-14. Prudent man rule for management of investments -- Sale of security or investment for less than cost.**

- (1) Persons selecting investments authorized by Sections 51-7-11 and 51-7-13 shall:
  - (a) exercise that degree of judgment and care, under the circumstances prevailing at the time the investment is selected, that persons of prudence, discretion, and intelligence exercise in the management of their own affairs;
  - (b) select investments not for speculation but for investment;
  - (c) consider:
    - (i) the probable safety of the capital;
    - (ii) the probable benefits to be derived;

- (iii) the probable duration for which that investment may be made;
  - (iv) the investment objectives specified in Section 51-7-17; and
  - (v) the investment portfolio as a whole.
- (2) A public treasurer may sell or otherwise dispose of, at less than cost, any security or investment in which public funds under his jurisdiction have been invested if that sale or other disposition tends to maximize the benefits that may be derived from the changed investment.

**51-7-15. Bonds of state treasurer and other public treasurers -- Reports to council.**

- (1) (a) The state treasurer, county, city, and town treasurers, the clerk or treasurer of each school district, and other public treasurers that the council designates by rule shall be bonded in an amount of not less than that established by the council.
- (b) The council shall base the minimum bond amount on the amount of public funds normally in the treasurer's possession or control.
- (2) (a) When a public treasurer deposits or invests public funds as authorized by this chapter, the public treasurer and the public treasurer's bondsmen are not liable for any loss of public funds invested or deposited unless the loss is caused by the malfeasance of the public treasurer or a member of the public treasurer's staff.
- (b) A public treasurer and the public treasurer's bondsmen are liable for a loss for any reason from deposits or investments not made in conformity with this chapter and the rules of the council.
- (3) (a) A public treasurer shall file a written report with the council on or before January 31 and July 31 of each year.
- (b) The report shall contain:
- (i) the information about the deposits and investments of that public treasurer during the preceding six months ending December 31 and June 30, respectively, that the council requires by rule; and
  - (ii) information detailing the nature and extent of interest rate contracts permitted by Subsection 51-7-17(3).
- (c) A public treasurer shall make copies of the report available to the public at the public treasurer's office during normal business hours.

**51-7-16. State Money Management Council -- Members -- Terms -- Vacancies -- Chair and vice chair-- Executive secretary -- Meetings -- Quorum -- Members' disclosure of interests -- Per diem and expenses.**

- (1) (a) There is created a State Money Management Council composed of five members appointed by the governor after consultation with the state treasurer and with the consent of the Senate.
- (b) The members of the council shall be qualified by training and experience in the field of investment or finance as follows:
- (i) at least one member, but not more than two members, shall be experienced in the banking business;
  - (ii) at least one member, but not more than two members, shall be an elected treasurer;
  - (iii) at least one member, but not more than two members, shall be an appointed public treasurer; and
  - (iv) two members, but not more than two members, shall be experienced in the field of investment.

- (c) No more than three members of the council may be from the same political party.
- (2) (a) Except as required by Subsection (2)(b), the council members shall be appointed for terms of four years.
  - (b) Notwithstanding the requirements of Subsection (2)(a), the governor shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the terms of council members are staggered so that approximately half of the council is appointed every two years.
  - (c) When a vacancy occurs in the membership for any reason, the replacement shall be appointed for the unexpired term.
  - (d) All members shall serve until their successors are appointed and qualified.
- (3) (a) The council members shall elect a chair and vice chair.
  - (b) The state treasurer shall serve as executive secretary of the council without vote.
- (4) (a) The council shall meet at least once per quarter at a regular date to be fixed by the council and at other times at the call of the chair, the state treasurer, or any two members of the council.
  - (b) Three members are a quorum for the transaction of business.
  - (c) Actions of the council require a vote of a majority of those present.
  - (d) All meetings of the council and records of its proceedings are open for inspection by the public at the state treasurer's office during regular business hours except for:
    - (i) reports of the commissioner of financial institutions concerning the identity, liquidity, or financial condition of qualified depositories and the amount of public funds each is eligible to hold; and
    - (ii) reports of the director concerning the identity, liquidity, or financial condition of certified dealers.
- (5) (a) Each member of the council shall file a sworn or written statement with the lieutenant governor that discloses any position or employment or ownership interest that he has in any financial institution or investment organization.
  - (b) Each member shall file the statement required by this Subsection (5) when he becomes a member of the council and when substantial changes in his position, employment, or ownership interests occur.
- (6) A member may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses in accordance with:
  - (a) Section 63A-3-106;
  - (b) Section 63A-3-107; and
  - (c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 63A-3-107.

**51-7-17. Criteria for investments.**

- (1) As used in this section:
  - (a) "Affiliate" means, in relation to a provider:
    - (i) an entity controlled, directly or indirectly, by the provider;
    - (ii) an entity that controls, directly or indirectly, the provider; or
    - (iii) an entity directly or indirectly under common control with the provider.
  - (b) "Control" means ownership of a majority of the voting power of the entity or provider.
- (2) (a) A public treasurer shall consider and meet the following objectives when

depositing and investing public funds:

- (i) safety of principal;
- (ii) need for liquidity;
- (iii) yield on investments;
- (iv) recognition of the different investment objectives of operating and permanent funds; and
- (v) maturity of investments, so that the maturity date of the investment does not exceed the anticipated date of the expenditure of funds.

(b) A public treasurer shall invest the proceeds of general obligation bond issues, tax anticipation note issues, and funds pledged or otherwise dedicated to the payment of interest and principal of general obligation bonds and tax anticipation notes issued by the state or a political subdivision of the state in accordance with:

- (i) Section 51-7-11; or
- (ii) the terms of the borrowing instrument applicable to those issues and funds, if those terms are more restrictive than Section 51-7-11.

(c) A public treasurer shall invest the proceeds of bonds other than general obligation bonds and the proceeds of notes other than tax anticipation notes issued by the state or a political subdivision of the state, and all funds pledged or otherwise dedicated to the payment of interest and principal of those notes and bonds:

- (i) in accordance with the terms of the borrowing instruments applicable to those bonds or notes; or

- (ii) if none of those provisions are applicable, in accordance with Section 51-7-11.

(d) A public treasurer may invest proceeds of bonds, notes, or other money pledged or otherwise dedicated to the payment of debt service on the bonds or notes in investment agreements if:

- (i) the investment is permitted by the terms of the borrowing instrument applicable to those bonds or notes or the borrowing instrument authorizes the investment as an investment permitted by the State Money Management Act;

(ii) either the provider of the investment agreement or an entity fully, unconditionally, and irrevocably guaranteeing the provider's obligations under the investment agreement has received a rating of:

(A) at least "AA-" from S&P or "Aa3" from Moody's for investment agreements having a term of more than one year; or

(B) at least "A-1+" from S&P or "P-1" from Moody's for investment agreements having a term of one year or less;

(iii) the investment agreement contains provisions approved by the public treasurer that provide that, in the event of a rating downgrade of the provider or its affiliate guarantor, as applicable, by either S&P or Moody's below the "A" category or its equivalent, or a rating downgrade of a nonaffiliate guarantor by either S&P or Moody's below the "AA" category or its equivalent, the provider must, within 30 days after receipt of notice of the downgrade:

(A) collateralize the investment agreement with direct obligations of, or obligations guaranteed by, the United States of America having a market value at least equal to 105% of the amount of the money invested, valued at least quarterly, and deposit the collateral with a third-party custodian or trustee selected by the public treasurer; or

(B) terminate the agreement without penalty and repay all of the principal invested and the interest accrued on the investment to the date of termination; and

(iv) the public treasurer receives an enforceability opinion from the legal counsel of the investment agreement provider and, if there is a guarantee, an enforceability opinion from the legal counsel of the guarantor with respect to the guarantee.

(3) (a) As used in this Subsection (3), "interest rate contract" means interest rate exchange contracts, interest rate floor contracts, interest rate ceiling contracts, or other similar contracts authorized by resolution of the governing board or issuing authority, as applicable.

(b) A public treasurer may:

(i) enter into interest rate contracts that the governing board or issuing authority determines are necessary, convenient, or appropriate for the control or management of debt or for the cost of servicing debt; and

(ii) use its public funds to satisfy its payment obligations under those contracts.

(c) Those contracts:

(i) shall comply with the requirements established by council rules; and

(ii) may contain payment, security, default, termination, remedy, and other terms and conditions that the governing board or issuing authority considers appropriate.

(d) Neither interest rate contracts nor public funds used in connection with these interest rate contracts may be considered a deposit or investment.

(4) A public treasurer shall ensure that all public funds invested in deposit instruments are invested with qualified depositories within Utah, except:

(a) for deposits made in accordance with Section 53B-7-601 in a foreign depository institution as defined in Section 7-1-103;

(b) reciprocal deposits, subject to rules made by the council under Subsection 51-7-18(2); or

(c) if national market rates on instruments of similar quality and term exceed those offered by qualified depositories, investments in out-of-state deposit instruments may be made only with institutions that meet quality criteria set forth by the rules of the council.

#### **51-7-18. Duties of council.**

(1) The council shall:

(a) advise the state treasurer and other public treasurers about investment policies;

(b) cooperate with the commissioner of financial institutions by promoting measures and rules that will assist in strengthening the banking and credit structure of the state;

(c) at least annually, review the rules adopted under the authority of this chapter that relate to the deposit and investment of public funds;

(d) at least annually, distribute the rules and amendments to rules adopted under the authority of this chapter that relate to the deposit and investment of public funds to all public treasurers; and

(e) provide, at least semiannually, a list of certified dealers that meet criteria established by this chapter and council rules.

(2) The council may:

(a) recommend proposed changes in statutes governing the deposit and investment of public funds to the Legislature;

(b) make rules governing:

(i) the financial reporting requirements of qualified depositories in which public funds may be deposited;

(ii) the conditions and procedures for maintaining and revoking a financial institution's

designation as a qualified depository;

- (iii) the definition of depository capital;
- (iv) the conditions for maintaining deposits at a permitted depository;
- (v) the conditions and procedures for maintaining and revoking a primary reporting dealer's or a broker dealer's designation as a certified dealer;
- (vi) certified investment advisers who deal with public treasurers, including establishing standards and requirements for the use, qualification, and regulation of certified investment advisers;
- (vii) the conditions and procedures for maintaining and revoking a federal covered adviser's or an investment adviser's designation as a certified investment adviser;
- (viii) the conditions and procedures by which public treasurers may deposit and invest public funds;
- (ix) quality criteria for corporate obligations;
- (x) the conditions and procedures by which public entities may use interest rate contracts authorized by Subsection 51-7-17(3); and
- (xi) other rules necessary to carry out its functions, powers, duties, and responsibilities under this chapter.

(3) The council may not make rules requiring a qualified depository to pledge or deposit any of its assets in order to secure a deposit of public funds, except that public deposits in excess of the maximum amount shall be collateralized as provided in Subsections 51-7-18.1(5)(b) and (6).

(4) Subject to legislative funding, the state treasurer shall supply qualified staff to the council.

(5) If any rule or act of the council would constitute an infringement upon the state treasurer's constitutional duties and powers to have custody of and invest public money, the conflicting rule or act is advisory and not mandatory.

**51-7-18.1. Qualified depositories list -- Reports -- Treatment of confidential information -- Powers -- Staff -- Limits on powers.**

(1) (a) The council shall provide a list of qualified depositories to each public treasurer at least semiannually.

(b) The list shall include:

- (i) the name of each qualified depository; and
- (ii) the maximum amount of public funds that each qualified depository is eligible to hold.

(2) In determining the maximum amount of public deposits for a qualified depository, the council may not designate a maximum amount for any qualified depository that is more than twice that depository's capital as defined by council rule.

(3) (a) The council may require each qualified depository to submit monthly reports to the commissioner of Financial Institutions disclosing the amount of public funds held by the depository at the close of business on a day designated by the council.

(b) The council may also require the qualified depository to include in the report:

- (i) information about the character and condition of the qualified depository's assets;
- (ii) information about the qualified depository's deposits and other liabilities;
- (iii) information about the qualified depository's capital; and
- (iv) any other information that the council considers necessary in order for it to fulfill



its responsibilities under this chapter.

(c) The council shall require that any reports submitted be verified by the oath or affirmation of the president or vice-president of the qualified depository.

(d) Any officer of a qualified depository who knowingly makes or causes to be made any false statement or report to the council or any false entry in the books or accounts of the qualified depository is guilty of a class A misdemeanor.

(4) (a) Notwithstanding Section 7-1-802, the commissioner may disclose necessary information about the condition of any qualified depository to the council to assist it in evaluating the eligibility of any qualified depository to receive and hold public funds.

(b) If the secretary of the council or any member of the council discloses confidential information obtained from the commissioner under this subsection, he is guilty of a class A misdemeanor.

(c) If any member of the council discloses confidential information obtained from the commissioner under this subsection, the governor shall remove him from his position.

(5) Upon the vote of at least three of the council members, the commissioner shall require any qualified depository to:

(a) surrender deposits of public funds that exceed the amount that the qualified depository may legally hold under authority of this chapter and council rule; or

(b) pledge collateral security for those excess deposits.

(6) (a) If the commissioner orders the qualified depository to pledge collateral security for the excess deposits, the collateral security pledged shall have a market value determined upon the last day of the month of:

(i) 110% of the amount of the excess deposits, if the collateral consists of obligations of or fully guaranteed by the United States or its agencies as to principal and interest, a segregated earmarked deposit account, or notes, drafts, bills of exchange, or bankers' acceptances that are eligible for rediscount or purchase by a federal reserve bank;

(ii) 120% of the amount of the excess deposits, if the collateral consists of obligations of the state of Utah or any of its political subdivisions; and

(iii) 130% of the amount of the excess deposits, if the collateral consists of obligations of other readily marketable bonds, notes, or debentures.

(b) The qualified depository shall deposit any collateral pledged to secure excess deposits with the state treasurer.

(c) The state treasurer may not release the collateral until he has received written confirmation from the commissioner that the qualified depository:

(i) has relinquished the excess deposits; or

(ii) is in compliance with this chapter and council rules.

(7) Any qualified depository that fails to comply with a written order issued by the commissioner under authority of this section within 15 days of receipt of the order is ineligible to receive or renew any deposits or investments of public funds until it receives written authorization to do so from the council.

(8) In addition to the requirements set forth by rule, in order to be certified as a qualified depository as defined in Section 51-7-3, a depository institution shall pay to the commissioner an annual certification fee of \$250 due April 1 of each year.

## **51-7-18.2. Public treasurer's reports -- Contents.**

(1) The council may:

(a) require a public treasurer to prepare and file a written report in a form prescribed by the council containing the information required by this section; and  
(b) specify that the report will contain the information required by this section for any date.

(2) The council shall require the report to include information:  
(a) specifying the amount of public funds in the public treasurer's possession or control;  
(b) detailing the nature and extent of the deposit and investment of those funds;  
(c) detailing the rate of return on each deposit or investment; and  
(d) detailing the nature and extent of interest rate contracts authorized by Subsection 51-7-17(3).

(3) The public treasurer shall file the report with the council within 10 days after the day on which the public treasurer receives the council's request.

(4) A public treasurer shall make copies of a report required by this section available for inspection by the public at the public treasurer's office during normal business hours.

#### **51-7-18.3. Certified dealers' list -- Fees.**

(1) (a) The council shall provide a list of certified dealers to each public treasurer at least semiannually.

(b) The list of certified dealers shall include:  
(i) the name of each certified dealer; and  
(ii) the name of each agent authorized by the certified dealer to conduct investment transactions with the public treasurers.

(2) In addition to the requirements set forth by rule, in order to become a certified dealer as defined in Section 51-7-3, a dealer shall pay to the director an annual certification fee of \$500 due on or before April 30 of each year.

#### **51-7-18.4. Certified investment advisers' list -- Fees.**

(1) (a) The council shall provide a list of certified investment advisers to each public treasurer at least semiannually.

(b) The list of certified investment advisers shall include:  
(i) the name of each certified investment adviser; and  
(ii) the name of each investment adviser representative authorized by the certified investment adviser to provide investment advisory services to public treasurers.

(2) In addition to the requirements set forth by rule, in order to become a certified investment adviser as defined in Section 51-7-3, a certified investment adviser shall pay to the director an annual certification fee of \$500 due on or before April 30 of each year.

#### **51-7-19. Increase in deposits of public funds -- Authorization.**

(1) The commissioner of financial institutions may, with the approval of the council:  
(a) increase for a period not to exceed 90 days the amount of public funds any qualified depository may hold whenever additional deposit resources are required in connection with the flotation, conversion, or redemption of a bond issue, for initial deposits of tax collections or newly received federal money; and

(b) authorize a qualified depository to hold deposits of public funds in excess of the maximum to which the depository would otherwise be entitled to hold under the rules of the council, if the council finds that such excess deposits are necessary or advisable to promote the

economic welfare of the area in which the depository is located.

(2) Any increase in deposits of public funds authorized by the commissioner under Subsections (1)(a) or (1)(b) shall be secured by a pledge of collateral as prescribed in Subsection 51-7-18.1(5)(b) to the extent that such increased deposit exceeds the then current maximum for insurance of accounts by the applicable federal deposit insuring agency.

**51-7-22. Penalty for violation by public treasurer.**

(1) Any public treasurer who willfully violates the deposit and investment provisions of this chapter is guilty of a class A misdemeanor.

(2) Any public treasurer who knowingly makes or causes to be made a false statement or report to the council is guilty of a class A misdemeanor.

**51-7-22.4. Penalties for violation by certified investment advisers.**

(1) An intentional violation by a certified investment adviser of Section 51-7-7, 51-7-11, or 51-7-11.5, or any rule or order under this chapter is punishable by a civil penalty of:

(a) \$1,000 for each day of noncompliance for the investment adviser; and

(b) \$5,000 for each day of noncompliance for the firm or institution where the certified investment adviser is employed.

(2) In addition to any other penalty for a criminal violation of this chapter, the sentencing judge may impose any penalty or remedy provided for in Subsection 51-7-22.5(1)(b).

(3) Funds collected under Subsection (1) shall be deposited in the General Fund.

**51-7-22.5. Enforcement.**

(1) Whenever it appears to the council that any person has engaged, is engaging, or is about to engage in any act or practice constituting a violation of this chapter or any rule issued under authority of this chapter:

(a) the council may bring an action in the appropriate district court of this state or the appropriate court of another state to enjoin the acts or practices and to enforce compliance with this chapter or any rule under this chapter; and

(b) upon a proper showing in an action brought under this section, the court may:

(i) issue a permanent or temporary, prohibitory, or mandatory injunction;

(ii) issue a restraining order or writ of mandamus or other extraordinary writ;

(iii) enter a declaratory judgment;

(iv) order disgorgement;

(v) order rescission;

(vi) impose a fine of not more than \$50,000 for each violation of the chapter; or

(vii) provide any other relief that the court considers appropriate.

(2) An indictment or information may not be returned nor may a civil complaint be filed under this chapter more than five years after discovery of the alleged violation.

**51-7-23. Investments previously authorized allowed until liquidated.**

Any investment held by a public treasurer that as of January 1, 1989, was previously authorized, but no longer qualifies under this chapter, is considered an authorized investment until it matures or is sold.

**51-7-24. Sales and purchase in violation -- Remedies -- Limitation of action.**

(1) (a) Each certified investment adviser or certified dealer who transacts securities business with a public treasurer in violation of this chapter or any rule made or order issued under authority of this chapter is liable to the public treasurer.

(b) The public treasurer may either sue to recover either:

(i) damages, if the public treasurer no longer owns the security; or

(ii) the sum of the following, less the amount of any income received on the security upon the tender of the security:

(A) the consideration paid for the security;

(B) interest at 12% per year from the date of payment;

(C) costs; and

(D) reasonable attorney's fees.

(c) Damages are the amount that would be recoverable upon a tender less the value of the security when the public treasurer disposed of it and interest at 12% per year from the date of disposition.

(2) If the court finds that the violation was reckless or indifferent, the court may, in a suit brought under Subsection (1), award an amount equal to three times the consideration paid for the security before adding interest, costs, and attorney's fees and before subtracting the income received from the sale of the security.

(3) (a) Each person who directly or indirectly controls a seller or buyer or investment adviser is liable under Subsection (1).

(b) Except as provided in Subsection (3)(c), the following are liable jointly and severally with and to the same extent as the seller or purchaser:

(i) each partner, officer, or director of a seller or buyer;

(ii) each person occupying a similar status or performing similar functions;

(iii) each employee of a seller or buyer who materially aids in the sale or purchase;

(iv) each certified investment adviser who materially aids in providing the advice; and

(v) each broker-dealer or agent who materially aids or abets in the sale.

(c) The nonseller or nonpurchaser is not liable under Subsection (3)(b) if the nonseller or nonpurchaser proves that he did not know or should have known, and in exercise of reasonable care could not or should not have known, of the existence of the facts that caused the alleged liability.

(4) An action to enforce any liability under this section must begin within five years of the act or transaction constituting the violation or two years after the discovery by the public treasurer of the facts constituting the violation, whichever occurs later.

(5) A person may not base any suit on a contract if:

(a) the person made or engaged in the performance of the contract in violation of this chapter or any rule or order issued under the authority of this chapter; or

(b) the person acquired any purported right under the contract with knowledge of the facts by reason of which the making of the contract or the performance of the contract was a violation of this chapter or any rule or order issued under the authority of this chapter.

(6) A condition, stipulation, or provision binding a treasurer acquiring a security to waive compliance with this chapter or a rule made or order issued under authority of this chapter is void.

(7) The rights and remedies provided by this section are in addition to any other rights or remedies that may exist at law or in equity.